The law is clearly summarised at p. 53, paragraph 49, of 28 *Halsbury*, thus:—

"Duty to trespassers. The occupier of premises has no duty to take reasonable care for the protection of a trespasser, or even to protect him from concealed danger. The trespasser comes on to the premises at his own risk. The protection afforded by this rule is not limited to the occupiers of land but extends to those who control structures or objects such as a ship, part of a ship in a dry dock or a vehicle. The occupier is in such a case liable only where the injury is due to some wilful or reckless act involving something more than the absence of reasonable care. When a trespasser is known to be present, the occupier must abstain from doing an act which if done carelessly must reasonably be contemplated as likely to injure him and abstain from doing acts which are intended to injure him."

In the case of *Commissioner for Railways* v. *Quinlan*,[1] Viscount Radcliffe (delivering the judgment of the Privy Council) said at p. 838:—

"Their Lordships have studied with care and respect the judgments of the members of the Court of Appeal in England in *Videan* v. *British Transport Commission*, two of which adopt much the same line of reasoning as that upon which their Lordships have commented in the recent High Court cases in Australia: but they remain quite unpersuaded that the measure of an occupier's duty to a trespasser can be determined in all cases by what is called the foreseeability test or that it is correct to describe the nature of the duty by saying that if the circumstances are such that the occupier 'ought to foresee' even the presence of a trespasser, the duty of care exends to the trespasser also. . . . the situation would be less liable to be misunderstood if it were explained that the only trespasser to whom the occupier is accountable for his actions, even if dangerous, is one of whose presence he actually knows or one whose presence at the time of injury can fairly be described as extremely likely or very probable."

Now what are the facts in this case? The evidence of the first defendant and of the superintendent public cleansing and of the divisional public health assistant clearly show that the defendants knew the presence of the trespassers and in fact on the day of the accident the first defendant saw many trespassers picking tins there. On the authority of *Quinlan's* case the defendants owed a duty of care to the deceased and the act of the first defendant in reversing without looking to make sure that the deceased was not behind the lorry was negligence on his part.

The remaining question is whether the accident was contributed to by the negligence of the deceased. The deceased surely was aware that the Public Health lorries go in and out of the dumping ground and that these lorries reverse to get to the face tip to tip the refuse. Yet she failed to keep a proper look out and failed to observe that the lorry was reversing and failed to move to a safe spot to avoid the accident. I assess the degree of contributory negligence on her part at 50%.

General damages and special damages have been agreed at $3,500 and $1,100 respectively.

There will be judgment for the plaintiffs in the sum of $2,300 and costs.

Judgment for the plaintiffs.

Solicitors: *Murphy & Dunbar.*

VISVASAM v. SINGAPORE TODDY TAPPERS' UNION

[O.C.J. (Chua J.) September 26, 1968]
[Singapore — Suit No. 2058 of 1964]

Industrial Law — Trade Union — Expulsion of member by executive council — Breach of natural justice — Resolution to expel member ultra vires — Extent to which court will examine decision of domestic tribunal.

In this case the plaintiff had been expelled from the membership of the defendant union. He claimed that he was not afforded any opportunity of stating his case before the executive council of the union before his expulsion. He alleged therefore that the purported expulsion was contrary to the principles of natural justice. He claimed a declaration that the expulsion was *ultra vires*, an injunction restraining the defendants, their officers and servants from acting upon or enforcing the resolution and damages. It was argued *inter alia* on behalf of the defendants that the relief claimed should not be granted as the plaintiff had not exhausted the domestic remedies available to him by appealing to the annual or extraordinary general meeting against his expulsion.

Held: (1) the resolution of the executive council to expel the plaintiff could not be supported and was *ultra vires* as being contrary to natural justice in that the executive council had not given the plaintiff an opportunity of stating his case before them and had not acted in the matter of the said resolution in a judicial manner;

(2) there was no contractual provision in this case requiring domestic remedies to be exhausted before resort to the courts and therefore the plaintiff was entitled to the reliefs claimed.

Cases referred to:—

(1) *White* v. *Kuzych* [1951] 2 All E.R. 435.

(2) *Lee* v. *The Showmen's Guild of Great Britain* [1952] 2 Q.B. 329.

(3) *Annamunthodo* v. *Oilfield's Workers Trade Union* [1961] 3 All E.R. 621.

(4) *Lawlor* v. *Union of Post Office* [1965] 1 All E.R. 353.

CIVIL SUIT.

Y. R. Jumabhoy for the plaintiff.

Lai Kew Chai for the respondents.

Cur. Adv. Vult.

Chua J.: The plaintiff's claim in this case is:—

"(1) For a declaration that the resolution of the executive council of the defendant union passed on 19th August 1964 purporting to expel the plaintiff from the membership of the defendant union was and is *ultra vires* on the ground that the same was and is contrary to natural justice, in that the said executive council gave the plaintiff no opportunity of stating his case before them, and the said execu-

tive council did not act in the matter of the resolution in a judicial manner.

(2) An injunction restraining the defendants, their officers and servants from acting upon or enforcing the said resolution.

(3) Damages for breach of contract."

On the evidence adduced before me I find that the facts are these. The plaintiff was a toddy tapper and a member of the defendant union (hereinafter referred to as "the union") until his purported expulsion in August, 1964. The union was first registered in 1957 and the plaintiff was the president of the union in 1958 and was again elected president in 1963. He ceased to be president sometime in February, 1964. The government of the union and the conduct of its business are vested in the executive council consisting of the president, vice-president, secretary, assistant secretary, treasurer and four members. In May, 1963, at the annual general meeting the members decided to buy a building to be used as union premises. In July, 1963, the plaintiff entered into an agreement to purchase a house in Kovan Gardens (to which I will hereafter refer to as "the Kovan Gardens property") from the Ee Finance Co. Ltd. Prior to entering into the contract the plaintiff together with several other persons called at the office of Messrs. Braddell Bros., the solicitors for Ee Finance Co. Ltd., in connection with the purchase of the property and they were advised that since the union was not a corporate body the contract should be entered into by the trustees of the union. The plaintiff informed the solicitors that he was the president of the union and that for the time being the contract be entered into by him with Ee Finance Co. Ltd. and that he would give the names of the trustees when the conveyance was prepared. The house at Kovan Gardens was in the course of being erected and the progress payments of the purchase price were made by the union upon cheques drawn by it.

At a meeting of the executive council held on the 14th June, 1963, under the chairmanship of the plaintiff, the executive council unanimously approved the payment of an advance of $1,000 for the purchase of the Kovan Gardens property "for the union in the name of the union president, A. Visvasam" and "gave permission for the payment of $5,500 for drawing the agreement." This resolution was passed although under rule 13(b) of the union's rules it was provided that "the three trustees for the time being shall have vested in them all the real and personal estate whatever belonging to the union and they shall deal with it in such way as the executive council may direct." The plaintiff was not one of the trustees.

Sometime towards the end of 1963 there was some trouble amongst the members of the executive council and four members of the executive council resigned. One of them was P. Thangavelu. In January, 1964, 57 members of the union sent a petition to the executive council requesting that a general meeting be held to discuss and settle the differences. Amongst the signatories were the four executive council members who had resigned. On the 27th January, 1964, the plaintiff signed a circular letter addressed to the members informing them of the receipt of the petition and intimating that the remaining members of the executive council would send in their resignations.

In February, 1964, a new executive council was elected — V. Erulappan, president; K. Kanapathy, vice-president; C. Mariadas, secretary and six other members. At an extraordinary general meeting held on the 24th February, 1964, it was resolved that "V. Erulappan, K. Kanapathy and S. Sevapunniam be appointed three trustees of the union under rule 13 of the rules of the union and that they shall have vested in them all the real and personal estate of the union and that the union be authorised to purchase the Kovan Gardens property at the price of $23,000 and that the conveyance of the said property be made in favour of the abovenamed three trustees and they be authorised to execute the said conveyance containing certain restrictive covenants mentioned in the said conveyance."

On the 24th February, 1964, the plaintiff wrote the following letter to the union's auditor:—

"With reference to house property described as 14, Kovan Gardens, I hereby declare that the said property was purchased in my name as per resolutions dated 25th May, 1963 of general body of members and resolution committee members dated 14th June, 1963. The said property was purchased in my name since the sellers who are also contractors for putting up of building insisted that they would enter into an agreement with an individual and not with the union. It was the view of the committee that the property should be purchased in my name since I was the president of the union at the time of agreement. I further declare that on completion of the agreements dated 14th July, 1963 I shall subscribe my signature for transfer of property to the union by Ee Finance Co. Ltd. the seller."

In March, 1964, two reports against the plaintiff were sent to the executive council. The first (Ex. D.3) was from S. Govindasamy, a member, dated 17th March, 1964. The second (Ex. D.4) was from P. Thangavelu, a member of the executive council. Both Govindasamy and Thangavelu asked C. Mariadas, the secretary, to write the reports for them. Later another report against the plaintiff (Ex. D.5) was received by the executive council and it was from Vaithinasamy, a member.

On the 9th June, 1964, the secretary wrote the following letter to the plaintiff with reference to the Kovan Gardens property:—

"During your tenure of office as president of this union, the abovementioned house was purchased by the committee of this union with the union funds for use as union premises. There were trustees of the union in existence at that time and it would have been the proper and constitutional procedure to have the said house conveyed to the trustees jointly to be held by them in trust for the union.

On your instructions however, the said house was put in your name and the trustees were apparently completely ignored. This was a most irregular act, especially as you have never since then executed any declaration of trust or other similar document in respect of the house to indicate that you are holding it on behalf of the union.

The present committee have called upon you several times already to transfer the said house into the names of union officials as you are no more a member of the executive committee of this union but you have persistently refused to comply with such requests.

I now hereby formally request and require you to convey the said house forthwith into the names of the following persons:—

1. V. Erulappan
2. S. Sevapunniam
3. K. Kanapathy

who are the present trustees of this union and in whom according to union rules all the landed property of the union must be vested.

If you fail to comply with the foregoing request within seven (7) days of the date of the receipt by you of this letter, legal proceedings may be taken against you without further notice to you and in such proceedings I shall ask the court to make an order that you pay the costs of the said proceedings."

On the 21st June, 1964, the plaintiff sent the following reply:—

"With reference to your letter dated 9th instant, concerning the transfer of the union premises to the trustees of the union.

As you know that we had a personal conversation on the 15th after receiving your above-mentioned letter regarding the date of going to the registrar, you told me that you will be informing me the date later.

Since up to the date of writing this letter I received no information from you regarding the above-mentioned matter, as the date expires on the 22nd as mentioned in your letter I have to bring this matter to your consideration to inform me the date of going to the registrar.

I hereby await to transfer the union premises to the trustees of the union as mentioned in your letter according to the rules and regulations of the union.

Awaiting to hear from you."

On the 27th June, 1964, the plaintiff wrote the following letter to Messrs. Braddell Bros. with reference to the Kovan Gardens property:—

"Sometime last year the Singapore Toddy Tappers' Union purchased the above mentioned property from the Ee Finance Co. Ltd. You were the solicitors for both the vendor and the purchaser.

I was the president of the union at that time and the arrangement was then for the property to be conveyed into my name. I am no longer the president now the property should be conveyed into the names of the current trustees of the Singapore Toddy Tappers' Union.

The present secretary of the union, one C. Mariadas of 876 Yio Chu Kang Road, Singapore will call on you to give you the names of ths said trustees and any other information you may require.

Will you kindly prepare the necessary conveyance in favour of the said trustees and have same executed as soon as possible by the Ee Finance Co. Ltd.? If there is any document to be signed by me to finalise matters please let me know and I shall do whatever is necessary.

The said C. Mariadas will make all necessary payments."

On the same day the plaintiff wrote a further letter to Braddell Bros. acknowledging that the contract with Ee Finance Co. Ltd. were entered by him for and on behalf of the union and that all the progress payments so far made to the Ee Finance Co. Ltd. by him were out of money belonging to the union and authorised Braddell Bros. to convey the property to the three trustees which he named.

On 11th July, 1964, the executive council received another report against the plaintiff (Ex. D.6) from Arumugam, a member.

No action was taken by the executive council on the first three reports. According to the secretary they were "filed away". But on receipt of Arumugam's report, the secretary, on the 13th July, wrote the following letter to the plaintiff:—

"I request you also to participate in the executive committee meeting at our union premises at 7 p.m. on 7th July, 1964.

On the 17th July the plaintiff replied to the secretary in these terms:—

"Received your letter. (I) read it. It has no explanation. Also, it does not appear that I have (any) business at the executive committee meeting. Therefore I am informing (you) that I will not be able to participate in the meeting."

By 17th July, K. Kanapathy had become the president. Erulappan had resigned and there were a few other changes in the membership of the executive council. Mariadas, however, remained the secretary.

At the executive council meeting of the 17th July, 1964, the letter of the plaintiff was discussed and it was decided to write to the plaintiff again "giving 7 days time and that, thereafter, it (the executive council) would make a proper decision." It was not stated what the plaintiff was to do within 7 days time. However, the secretary did not write to the plaintiff.

On the 30th July, 1964, the executive council held a meeting and one of the decisions taken which was recorded in the minutes of the meeting reads as follows:—

"With reference to A. Visvasam's letter of the 17th July, 1964, and the reports made against him by the members of the union namely:— P. Vaithinasamy, P. Thangavelu, S. Govindasamy and K. Kanapathy, the executive committee made an enquiry and after careful consideration it was unanimously decided that a serious

action should be taken against A. Visvasam and that this report should be conveyed to him in writing within 7 days and the copies thereof should be sent to N.T.U.C., Ministry of Labour and all other places."

It is to be noted that Kanapathy was the president and his report against the plaintiff was made orally to the executive council and was not recorded.

The secretary then wrote the following letter to the plaintiff on the 7th August:—

"We have received and seen your letter dated 17th July, 1964. In the past you had been president and also treasurer. When a member is invited to the executive committee no reasons are shown for the invitation. In spite of the fact that you are aware of this, your reply to the union has no explanation. You had written that it did not appear to you that you had any business at the executive committee meeting and further that it was not convenient for you to participate. Having been a responsible person in the union before, it is improper for you to write like that to the union. Comparing your letter to the union and the reports on you from other members it appears that your conduct is opposed to the union.

The reports made against you by members are given below. You should give proper answers to all of them. They have to be accepted by the executive committee. Otherwise, the union will not hesitate to take strong action against you under its rules within 7 days from the date of this letter. I hereby notify you accordingly.

1. You never participated in the general meeting of 19th February, 1964 held at the Tamils' Reform Association premises to remove you from the presidentship and elect another executive committee. You sent your ballot through a colleague and abused the other members. There was no notice of your non-participation in the general meeting and these are known to the other members.

2. At 9.00 p.m. on 16th March, 1963 standing in that part of Jalan Hock Chye where our members live, you compared our union's executive committee to your penis and uttered that you will make your friends and gangsters assault the committee. There is evidence for this.

3. On 30th March, 1964 standing in front of the house 227T Jalan Hock Chye you uttered words at random and asked: How did I receive bribe from the employer? By procuring the president's wife, the secretary's wife, or someone else's wife? Who said that you received bribe? Why did you not take action against them? You must provide answers to these.

4. You proposed to buy a new building for the union and despite the fact that there was always a trustee of the union you bought it in your name. You had been the president and you may remember that you were not a trustee. The executive committee headed by you was removed on a no-confidence motion and a new committee was elected by secret ballot under the union's rules. The new executive committee took office and when it asked you and the treasurer for the documents in respect of the new building, you refused to give all the documents to it.

After going here and there for three months to meet Mr. Devan Nair and having met him on the third month, we obtained through his permission great help from Mr. Nayagam, a committee member of the N.T.U.C. and after considerable expenses the new building of the union was transferred from your name to the trustee as it remains at present. Your conduct in this connection clearly appears to be opposed to the union. An explanatory reply is required for this.

5. On 10th July, 1964 the executive committee as usual sent ballots through the lorry-man to conduct a general secret ballot to elect a substitute for P. Kathamuthu. All other members accepted ballots but you said that it be thrown at your penis. Further you used several unnecessary words. You may write immediately wrongs done to you by the executive committee for you to criticise it and other matters within your knowledge.

6. While you and your three colleagues were drinking beer at the shop (on the height) at Jalan Hock Chye, you had rambled that you would crush the union, that you would give a good hiding to the president and secretary of the union and chase them out of the country, and that you with your gang would beat up all those in the executive committee. The president, secretary or the committee has done no wrongs to you so far. While you were president you had challenged, 'without this Visvasam, there would not be Singapore Toddy Tappers' Union. If I don't have president's post I will crush the union to smithereens.' We wish to remind you that if you want to crush the union it is impossible to do it so easily. We invited you to executive committee meetings several times to examine you personally into the above reports. You had written that you were not able to come. Within 7 days from the date of this letter you shall adequately reply in writing."

According to the secretary paragraph 2 was based on Govindasamy's report and paragraph 6 on Vaithinasamy's report and he admitted that a few matters set out in these two paragraphs were not in the reports of Govindasamy or Vaithinasamy. It is also to be noted that the complaint of the president was not set out in the letter nor were the names of the plaintiff's accusers given. According to the plaintiff he replied to this letter but the secretary said that the plaintiff did not reply. I will deal with this aspect of the matter later.

A notice was issued calling a meeting of the executive council for the 19th August, 1964, and the agenda of the meeting was stated to be "(1) General; (2) Accounts." It will be noted that there was no mention of any action being taken against the plaintiff.

On 19th August, 1964, the executive council held a meeting and the minutes of that meeting with reference to the plaintiff reads as follows:—

"As A. Visvasam has not come in spite of several requests to him to come to the committee, on 8th August, 1964 all the reports against A. Visvasam were put in writing and sent by A.R. Registered requiring him to reply within seven days. As he has not replied, the executive committee at its meeting to-day considered (the matter), and accepting that A. Visvasam is working directly against the union, decided that A. Visvasam should be removed from the membership list. It was unanimously decided that the decision be conveyed to the N.T.U.C., the employer, and A. Visvasam by A.R. Registered."

Now, it is to be noted that the letter of the secretary dated the 7th August did not ask the plaintiff to attend before the executive council. All that plaintiff was requested to do was to give a reply within 7 days of the date of the letter and yet the executive council thought fit to record in the minutes that the plaintiff "has not come

in spite of several requests to come to the committee."

On the 22nd August the secretary wrote the following letter to the plaintiff informing him that he had been expelled from the union:—

"Though you have been invited to attend the executive committee meeting several times you did not turn up. As requested by you an explanatory letter was written on 8th August, 1964 asking you to reply within seven days which you did not do up to nine days. Therefore, deciding that you have the intention of not wanting the union, the executive committee meeting held on 19th August, 1964 has dismissed you according to rule 10(a)/ or 10(h)/ * of the union. You are hereby informed accordingly."

The plaintiff's employer was informed of the expulsion and on the 24th August, 1964, the employer wrote to the plaintiff informing him that he, the employer, was forced to terminate the services of the plaintiff as from the 24th September, 1964.

On 9th December, 1964, the plaintiff commenced these proceedings against the union.

I now come to deal with the evidence relating to the reply, which the plaintiff alleged he sent to the executive council, on the 14th August.

The plaintiff's evidence on this matter was to this effect. He received the letter of the secretary on the 10th August. He was unhappy as none of the allegations in the letter was true. On the 13th August he went to see one Meyappan to ask him to write a reply for him. He dictated to Meyappan the letter and Meyappan wrote it down. The letter was not completed that day. The following day he went again to Meyappan and the letter was completed. Meyappan then made out two extra copies of the letter. He put the original letter signed by him and addressed to C. Mariadas in an envelope and handed it to V. Ramakrishnan, the assistant secretary and a member of the executive council, and asked Ramakrishnan to hand it to Mariadas. He produced a copy of the letter (Ex. P.5) dated 14th August, 1964. It is a long letter in which he complained that "in attempting to impose on me senseless and baseless accusations you have brazenly lied that the members had sent the accusations. If it is so, you could have mentioned their names." He then went on to answer the accusations against him point by point and ended by saying that the accusations were absolutely without truth.

The plaintiff called Meyappan and Ramakrishnan to give evidence. Meyappan's evidence was to his effect. The plaintiff came to see him on the 13th August, 1964, and asked him to write a letter to the union. The plaintiff dictated the letter and he wrote it out. The letter was not completed until the next day. He made two copies of the letter. He also wrote out the envelope one addressed to the union and the other to the N.T.U.C. Ex. P.5 was one of the copies which he made and the date at the top of it was corrected by him from the "13th" August to "14th" August.

Ramakrishnan's evidence was to this effect. On the 14th August, 1964, at 1 p.m. he met the plaintiff at the toddy store. The plaintiff gave him a letter in a sealed envelope addressed to the secretary and told him to hand it to the secretary. That same afternoon he handed the envelope to Mariadas who opened it and took out the letter and read it. On the 19th August, 1964, there was a meeting of the executive council. He was present and he asked Mariadas to read out the letter which the plaintiff had sent. Mariadas said "We sent by registered post a letter on the 7th; he had replied by handing it over direct, he has not sent it by post, so it is unnecessary to read the letter, just throw it away."

Mariadas in his evidence denied that Ramakrishnan handed him an envelope containing a letter from the plaintiff on the 14th August, 1964. He denied that Ramakrishnan asked him at the meeting of the 19th August, 1964, about the plaintiff's letter. Kanapathy in his evidence said that at the meeting of the 30th July Ramakrishnan did not say that the plaintiff had replied to the letter sent by the secretary.

On the balance of probabilities I think that it is more probable than not that the plaintiff sent this letter to the secretary. The plaintiff had previously answered the letters from the secretary. He had answered the notice of the 13th July requesting him to attend the meeting of the executive council on the 17th July. One would have thought that he certainly would answer the secretary's letter of the 7th August in which very serious allegations were made against him. It is inconceivable that the plaintiff would keep quiet after receiving that letter.

I will now outline the evidence that has been adduced as to what took place at the meeting of the executive council on 30th July and the 19th August, 1964 and how the decision to expel the plaintiff was taken.

Mariadas' evidence was shortly this. At the meeting of the 30th July he read out the four reports that had been received. Then there was a discussion on the reports, which lasted 1½ hours. It was then decided to write to the plaintiff and Ex. P.4 was the letter sent to the plaintiff. At the meeting of 19th August, 1964, the 4 written reports were again read by him to the meeting and he also read out his letter to the plaintiff. He told the meeting that the plaintiff had not replied. Kanapathy made a verbal report to the committee of his meeting with the plaintiff. The three ordinary members

* The parenthesis is supplied by the translator.

who made reports were present at the meeting. They were questioned by the council members. The council members discussed about the difficulties they had to get the plaintiff to transfer the union property to the union. They discussed whether the plaintiff was against the union. After discussion it was unanimously decided to expel the plaintiff.

Kanapathy's evidence was shortly this. At the meeting of the 17th July the plaintiff did not attend. Arumugam, at the request of the council, attended. As the plaintiff did not turn up Arumugam was asked to leave. After that meeting he met the plaintiff and told the plaintiff that the union had received several reports against him and asked him why he had behaved in that way and told him to come to the council meeting so that the matter could be discussed and settled. The plaintiff replied that he would speak to the witness but he would not come to the council meeting. He told the plaintiff that it would better for him to speak to the council at the next meeting but the plaintiff said he would not attend. He did not, however, tell the plaintiff that the next meeting would be on the 30th July. At the meeting of the 30th July, apart from the council members, the persons who had made reports against the plaintiff were present at the request of the council. He informed the council of his conversation with the plaintiff. The council wanted to find out the truth of the allegations and they examined the persons who had made the reports. The examination of these people lasted from ½ to ¾ of an hour. He himself reported to the council some remarks which he heard the plaintiff utter. At the meeting of the 19th August, apart from the council members, the persons who made the reports against the plaintiff were again present. The council members including Ramakrishnan examined the three ordinary members who had made reports. Thangavelu did not examine any of them. The council members asked him and Thangavelu about their reports.

Rakiat, another member of the executive council, gave evidence more or less similar to the evidence of Kanapathy and Mariadas. Thangavelu, another member of the executive council, also gave similar evidence.

It is worthy of note that nowhere in the minutes was it stated that the executive council examined the persons who had made reports against the plaintiff.

So much for the evidence.

The complaint of the plaintiff is that he was not afforded any opportunity of stating his case before the executive council before his expulsion. He claims, therefore, that the purported expulsion is contrary to the principles of natural justice.

The defendants plead that the plaintiff is not entitled to the declaration prayed for on the grounds (1) that the plaintiff was given the opportunity to state his case before the executive council but he did not avail himself of it; (2) that the plaintiff did not exhaust the domestic remedies available to him under rule 5(f) of the union's rules by appealing to the annual or extraordinary general meeting against the plaintiff's expulsion from membership before having resort to the law courts.

It will be convenient at this stage to examine the rule under which the plaintiff was expelled and the rule which gives the plaintiff the right to appeal. They are:—

(i) rule 10(h) which reads as follows:—

"The executive council shall have the power to impose fine, expel from membership or debar from holding any office or to dismiss from his office any member whose conduct is found to be prejudicial to the interests of the union or who has violated the rules of this union or deliberately disobeyed any of the resolutions passed by the union. The amount of the fine shall not exceed $20."

(ii) rule 5(f) which reads as follows:—

"A member who has been fined, expelled, debarred from holding office or dismissed from office by the executive council shall have the right to appeal to the annual or extraordinary general meeting whose decision shall be final."

The reasons for the plaintiff's expulsion as stated in the notice of expulsion to the plaintiff of the 22nd August, 1964, are that the plaintiff "has the intention of opposing the union and the intention of not wanting the union." Are these grounds on which the executive council can expel a member? He has not opposed the union, he only had the intention of opposing the union. What does "not wanting the union" mean? I do not know.

The first obligation on the executive council in this case before attempting to exercise the power to expel the plaintiff was to satisfy themselves that the plaintiff had acted in a manner prejudicial to the interests of the union. This clearly involves an inquiry and I have no hesitation in holding that this power to expel in this case is one of a quasi-judicial nature and it is therefore necessary that such power should be exercised in good faith for the benefit of the union and the principles of natural justice must also be observed in exercising this power.

I must say that, on the facts that I have, the plaintiff's complaint has great substance. The executive council proceeded to consider the very serious charges against the plaintiff without giving him an opportunity to be heard so as to enable him to face his accusers and rebut the charges against him. In the present instance what did the executive council do? Not only did the secretary withhold the plaintiff's letter from the executive council but the president himself

made accusations against the plaintiff who was not informed of the nature of the accusations. Both the secretary and the president say that the plaintiff was invited to attend the meeting of the executive council on a number of occasions to answer the charges made against him but there is no evidence that any written notice was sent to the plaintiff to attend such a meeting except to the one on the 17th July, 1964. It is to be noted that the plaintiff was not told of the charges against him until the 7th August, 1964, and even that letter did not inform the plaintiff as to when he could attend before the executive council to answer the charges. The president in his evidence said that no written notice was given to the plaintiff after the 13th July, 1964, as on the occasion that he met the plaintiff the plaintiff had said that he, the plaintiff, would not attend before the executive council. In my view it is incumbent on the executive council, even if what the president said is true, to send a written notice to the plaintiff setting out the date and time when he was to attend before the executive council to answer the charges. Not only did the executive council fail to do that, but they also proceeded to hear the report of the president against the plaintiff who was not given notice of it. Not satisfied with that the executive council permitted two of the plaintiff's accusers (the president and Thangavelu) who were also members of the executive council to deliberate on the matter and to vote on it.

I have no doubt that the executive council in the present case did not act in good faith. They were out to get the plaintiff by hook or by crook. They first accused the plaintiff of improper motive in putting the Kovan Gardens property in his name and refusing to transfer the property to the union. This appears to be the main accusation against the plaintiff but a study of the facts clearly shows that this accusation is totally unfounded.

The result is that I have come to the conclusion that the resolution of the executive council to expel the plaintiff cannot be supported and was *ultra vires* as being contrary to natural justice in that the executive council had not given the plaintiff an opportunity of stating his case before them and had not acted in the matter of the said resolution in a judicial manner.

It is argued by counsel for the defendants that I should not grant the relief sought by the plaintiff because he has not exhausted the domestic remedies available to him under rule 5(f) of the union's rules by appealling to the annual or extraordinary general meeting against his expulsion before having resort to the law courts. The case of *White* v. *Kuzych*,[1] is relied on.

Let us first consider as to what extent the court will examine the decision of a domestic tribunal.

In *Lee* v. *The Showmen's Guild of Great Britain*,[2] the plaintiff obtained an injunction restraining the defendant union of travelling showmen from expelling him and the principles on which the courts will intervene in decisions of domestic tribunals were considered. Denning L.J. said (at p. 341):—

> "The jurisdiction of a domestic tribunal, such as the committee of the Showmen's Guild, must be founded on a contract, express or implied. Outside the regular courts of this country, no set of men can sit in judgment on their fellows except so far as Parliament authorizes it or the parties agree to it. The jurisdiction of the committee of the Showmen's Guild is contained in a written set of rules to which all the members subscribe. This set of rules contains the contract between the members and is just as much subject to the jurisdiction of these courts as any other contract.
>
> It was once said by Sir George Jessel M.R. that the courts only intervened in these cases to protect rights of property: see *Rigby* v. *Connol;* and other judges have often said the same thing: see, for instance, *Cookson* v. *Harewood.* But Fletcher Moulton L.J. denied that there was any such limitation on the power of the courts; see *Osborne* v. *Amalgamated Society of Railway Servants;* and it has now become clear that he was right: see the cornporters' case, *Abbott* v. *Sullivan.* That case shows that the power of this court to intervene is founded on its jurisdiction to protect rights of contract. If a member is expelled by a committee in breach of contract, this court will grant a declaration that their action is *ultra vires.* It will also grant an injunction to prevent his expulsion if that is necessary to protect a proprietary right of his; or to protect him in his right to earn his livelihood; see *Amalgamated Society of Carpenters, etc.* v. *Braithwaite;* but it will not grant an injunction to give a member the right to enter a social club, unless there are proprietary rights attached to it, because it is too personal to be specifically enforced: see *Baird* v. *Wells.* That is, I think, the only relevance of rights of property in this connexion. It goes to the form of remedy, not to the right."

His Lordship continued (at p. 343):—

> "The question in this case is: to what extent will the courts examine the decisions of domestic tribunals on points of law? This is a new question which is not to be solved by turning to the club cases. In the case of social clubs, the rules usually empower the committees to expel a member who, in their opinion, has been guilty of conduct detrimental to the club; and this is a matter of opinion and nothing else. The courts have no wish to sit on appeal from their decisions on such a matter any more than from the decisions of a family conference. They have nothing to do with social rights or social duties. On any expulsion they will see that there is fair play. They will see that the man has notice of the charge and a reasonable opportunitv of being heard. They will see that the committee observe the procedure laid down by the rules; but they will not otherwise interfere: see *Labourchere* v. *Earl of Wharncliffe* and *Dawkins* v. *Antrobus.*
>
> It is very different with domestic tribunals which sit in judgment on the members of a trade or profession. They wield powers as great as, if not greater than, any exercised by the courts of law. They can deprive a man of his livelihood. They can ban him from the trade in which he has spent his life and which is the only trade knows. They are usually empowered to do this for any breach of their rules, which, be it noted, are rules which they impose and which he has no real opportunity of accepting or rejecting. In theory their powers are based on contract. The man is supposed

to have contracted to give them these great powers; but in practice he has no choice in the matter. If he is to engage in the trade, he has to submit to the rules promulgated by the committee. Is such a tribunal to be treated by these courts on the same footing as a social club? I say no. A man's right to work is just as important to him as, if not more important than, his rights of property. These courts intervene every day to protect rights of property. They must also intervene to protect the right to work. But the question still remains: to what extent will the courts intervene? They will, I think, always be prepared to examine the decision to see that the tribunal has observed the law. This includes the correct interpretation of the rules. Let me give an illustration. If a domestic tribunal is given power by the rules to expel a member for misconduct, such as here for 'unfair competition', does that mean that the tribunal is the sole judge of what constitutes unfair competition? Suppose it puts an entirely wrong construction on the words 'unfair competition' and finds a member guilty of it when no reasonable person could so find, has not the man a remedy? I think that he has, for the simple reason that he has only agreed to the committee exercising jurisdiction according to the true interpretation of the rules, and not according to a wrong interpretation. Take this very case. If the man is found guilty of unfair competition, the committee can impose a fine on him of a sum up to £250. Then if he has not the money to pay, or, at any rate, does not pay, within one month, the man automatically ceases to be a member of the guild: see rule 14. To be deprived of membership in this way is a very severe penalty on a man. It means that he will be excluded from all the fairgrounds of the country which are controlled by the guild or its members: see rules 11(g)(ii) and 15(a). This is a serious encroachment on his right to earn a livelihood, and it is, I think, not to be permitted unless justified by the contract into which he has entered. The courts have never allowed a master to dismiss a servant except in accordance with the terms of the contract between them. So also they cannot permit a domestic tribunal to deprive a member of his livelihood or to injure him in it, unless the contract, on its true construction, gives the tribunal power to do so."

The question arises whether the plaintiff in this case must first appeal against his expulsion to the annual general meeting or extraordinary general meeting before coming to the courts.

Let us examine the rules under which the annual general meeting or the extraordinary general meeting can be called. Under rule 7(a) the annual general meeting "shall be held in the month of May." The expulsion of the plaintiff took place in August, 1964, and the plaintiff would have to wait eight months before he could appeal to the annual general meeting. Under rule 9 the extraordinary general meeting "shall be convened (i) whenever the executive council shall deem it desirable, or (ii) at the request in writing of not fewer than fifty percent of members whose contributions are fully paid up, stating the object and reason for such meeting." It would appear therefore that the plaintiff did not have an absolute right to appeal to the extraordinary general meeting as his application could be blocked by the executive council unless he could get fifty per cent of the members to request such a meeting and it may be quite difficult and even impossible for the plaintiff to do that. Then his recourse would be to wait for 8 months to appeal to the annual general meeting and in the meantime he would cease to be a member with the disastrous effect that he could not be employed as a toddy tapper as the rules do not provide for a stay of expulsion pending appeal. It seems to me that this is an intolerable state of affairs and it cannot be said that when the plaintiff joined the union he agreed to accept such a state of affairs.

White v. *Kuzych* [1] is a special case. The respondent in that case was a member of a Canadian trade union and he was charged before the domestic tribunal set up under the bye-laws of the union with conduct unbecoming a member of the union and committing acts discreditable to it and other offences named as "serious offences" in the bye-laws. He was found guilty and at a general meeting a resolution was passed expelling him from the union. Article 26 of the bye-laws provided that if the respondent "feels that the decision is unfair or the penalty too severe" he may within 60 days file an appeal in writing with the executive of the Shipyard General Workers' Federation. Article 22 of the bye-laws provided that every member should be deemed to have entered into a contract with the union and at all times to abide by the following oath of obligation: "I promise that I will not become a party to any suit at law or in equity against this union or the federation, until I have exhausted all remedies allowed to me by said constitution and bye-laws." After his expulsion the respondent brought an action in the British Columbia Court for a declaration that he had not been validly expelled from the union and that he was still a member. The High Court held that the respondent was entitled to the declaration and this decision was affirmed by the Court of Appeal of British Columbia but the Privy Council held that the conclusion reached at the general meeting to expel the respondent was a "decision" within the meaning of article 26 even though it was tainted by bias and prejudice or arrived at in defiance of natural justice; accordingly, the conclusion reached by the general meeting was subject to an appeal to the federation which the respondent was bound by his contract to pursue before he issued his writ and therefore, he was not entitled to the declaration which he sought. Viscount Simon who delivered the judgment of the Board said at the end of the judgment:—

> "At any rate, this is the appeal which the respondent was bound by his contract to pursue before he could issue his writ. He has not done so and on this ground their Lordships will advise His Majesty that the appeal must be allowed."

It is to be noted that in our present case the plaintiff did not in consideration of the benefits bestowed by membership of the union undertake

to abide by the terms of the oath of obligation as in *White* v. *Kuzych.*

In *Annamunthodo* v. *Oilfield & Workers Trade Union,*[3] which is also a Privy Council case, the appellant was a member of the respondent union and as such had agreed to obey and was subject to the union's rules. He was charged in writing with four specific offences each under a named different rule. None of these four rules gave power to expel him in the circumstances but each provided its penalties. He attended the initial hearing of the charges before the general council of the union and the hearing was adjourned after he had denied them. He did not attend the subsequent proceedings and was found guilty in his absence. At the adjourned hearing the general council invoked another rule as to which no charge had been communicated to the appellant but under which there was a power of expulsion. The appellant was notified that he had been expelled under this rule. His appeals to the annual conference of delegates of the union and subsequently to the Supreme Court of Trinidad and the Federal Supreme Court failed to reverse this decision and the case finally came to the Privy Council and it was held, *inter alia,* that by appealing to the annual conference of delegates he had not thereby forfeited his right to redress in the courts. The case of *White* v. *Kuzych* was referred to in the judgment of the Privy Council. Lord Denning, who delivered the judgment of the Board, said (at p. 625) :—

"The third question is whether the appellant has lost his right to complain by appealing to the annual conference of delegates. As soon as he knew of his expulsion by the general council, he gave notice of appeal under r. 11(7). He had the opportunity to put before the annual conference of delegates all his objections to his expulsion. He does not complain of any failure of natural justice by that body. And they affirmed his expulsion. So can he now complain? This reasoning was accepted by Archer and Mylir JJ. They held that, by appealing, he had lost his right to complain of r. 11(7) being invoked. Indeed, he himself invoked r. 11(7) so as to appeal under it. So how can he now repudiate it? Their Lordships recognise the force of this reasoning, but they cannot agree with it. Even if the order of expulsion were capable of being affirmed or disaffirmed, their Lordships cannot regard an appeal as an act of affirmance. On the contrary, it is a disaffirmance — a complaint against the order of expulsion. If he had not appealed, it might have been said that he should have done so, that he should have exhausted all internal means of redress, before having recourse to the courts. Such a plea was upheld in the special circumstances that prevailed in *White* v. *Kuzych.* It was, therefore, quite proper for him to appeal to the annual conference before coming to the courts, even though he was not bound to do so. But, having appealed and failed, he does not by so doing forfeit his right to redress in the courts. If the original order was invalid, for want of observance of the rules of natural justice, he can still complain of it, notwithstanding his appeal.

Counsel for the respondent union did suggest that a man could not complain of a failure of natural justice unless he could show that he had been prejudiced by it. Their Lordships cannot accept this suggestion. If a domestic tribunal fails to act in accordance with natural justice, the person affected by their decision can always seek redress in the courts. It is a prejudice to any man to be denied justice. He will not, of course, be entitled to damages if he suffered none. But he can always ask for the decision against him to be set aside."

The underlining is mine.

In *Lawlor* v. *Union of Post Office,*[4] it was held that there being no power under the rules to stay expulsion pending appeal to the annual conference, the court would not refuse to intervene on the ground that such a right to appeal existed, and, natural justice having *prima facie* been wrongly denied to the plaintiffs, an interlocutory injunction would be granted restraining the defendants from acting on the expulsion decision. *White* v. *Kuzych* was discussed in that case and distinguished. Ungoed-Thomas J. said (at p. 362) :—

"Counsel referred me to the case of *White* v. *Kuzych,* where the Privy Council decided that a member of a trade union was bound to exhaust a right of appeal within the union before resorting to the courts. In that case, however, the member was contractually bound by express provision in the union bye-laws to exhaust the domestic remedies before resorting to the courts and that essential element is lacking here. In *Annamunthodo* v. *Oilfields Workers' Trade Union,* it was held that a trade union member who exercised a right of appeal within his union was not thereby precluded from having recourse to the courts. Lord Denning, in delivering the judgment of the Privy Council, referred to the 'special circumstances that prevailed in *White* v. *Kuzych*', evidently referring to the express provision which I have mentioned limiting recourse to the courts. He added that it was quite proper for the appellant to appeal to the annual conference before resorting to the courts 'even though he was not bound to do so'. The Privy Council thus seems to have been of the opinion that, in the absence of express provision to the contrary, a right of appeal to a domestic tribunal does not preclude resort to the courts before exercising that right. In *Bonsor* v. *Musicians' Union,* the court intervened in favour of a trade union member where his expulsion was *ultra vires* the union rules despite his omission to exercise a domestic right of appeal within the union."

In our present case there is no contractual provision requiring domestic remedies to be exhausted before resort to the courts.

For these reasons I have come to the view that the submission of counsel for the defendants must fail.

I now come to deal with the question of damages. The plaintiff is 50 years of age. He has been a toddy tapper for 8 years and was employed by the only Government Toddy contractor until his expulsion from the union when his employer terminated his services on the 15th September, 1964. His average income was $250 per month as a toddy tapper. After his services were determined he said that he could not get another job as a toddy tapper as there was no other Government Toddy contractor. He tried to get a job as a labourer but was un-

successful. Early in 1967 another Government Toddy contractor was appointed and he obtained a job as a toddy tapper but he worked only for a few days as his application for a work permit was not approved. He is still unemployed. It is submitted on behalf of the plaintiff that damages should be awarded from 15th September, 1964, until the day of the hearing at $250 per month amounting to $10,698.92. I am not satisfied that the plaintiff has not worked since 15th September, 1964. How could he have supported himself, his wife and six children for 43 months? The fact that he could not get a work permit cannot be attributed to his expulsion from the union. I think he was probably unemployed for not more than six months and his loss would be at $250 per month.

In the result there will be an order in terms of prayers (1), (2) and (3) of the plaintiff's claim and damages in the sum of $1,500.

Order in terms.

Solicitors: *Mallal & Namazie; Lee & Lee.*

SEBASTIAN v. PUBLIC PROSECUTOR

[R.Cr.J. (Chang Min Tat J.) October 1, 1968]
[Ipoh — Criminal Revision No. 18 of 1968]

Penal Code s. 174 — Witness not appearing on date fixed for hearing though subpoenaed — Warrant of arrest — Witness surrendering to court — Irregular endorsement on subpoena by police personnel — Bailable offence — Conviction of witness — Whether justified.

Constitutional Law — Right to liberty.

Six persons were arrested and charged with rioting sometime in May 1967. The trial was adjourned from time to time on no less than 7 occasions when finally it was concluded. The accused was one of the persons subpoenaed as a witness at the trial of the six accused. The seventh rioter was arrested sometime in March 1968. The accused was also one of the two witnesses subpoenaed to attend court. On the day fixed for hearing the prosecution applied for an adjournment and a fresh date was fixed for hearing on August 27, 1968. When the case was called on August 27, 1968 the prosecuting officer advised the magistrate that two of the witnesses (one of whom was the accused) had failed to turn up in court. The magistrate then issued a warrant for the arrest of the accused with the further order that no bail was to be allowed. He then adjourned the case to November 13, 1968. On August 28, 1968, on hearing of the order of arrest against him, the accused went to the court to surrender himself. He was brought before the magistrate, and the magistrate told the accused to go home and await arrest. The accused was arrested on September 17, 1968 and charged with intentionally omitting to appear in court on August 27, 1968. No facts were given and no reference was made to any allegation that the facts were as in the charge. After a plea in mitigation the accused was fined $100 which was paid but he was issued a receipt under a different name. The accused asked for a reconsideration of his case by letter.

Held: (1) the record clearly showed that the magistrate had made the bailable offence under section 174 of the Penal Code a non-bailable one. The learned magistrate had no right whatsoever to deprive a subject of his constitutional right to liberty and to be tried according to law;

(2) the correct procedure where a man surrenders himself to a warrant of arrest would be to put him on bond for his appearance on the date and then release him;

(3) at the trial of the accused of the charge under section 174 of the Penal Code no facts were given and the accused was never asked to admit the facts which would establish his guilt and therefore a grave injustice was inflicted upon him in the case;

(4) the endorsement of a new date of hearing on the subpoena on August 27, 1968 by a police personnel was not a proper or effective endorsement so that in the result there had not been served on the accused a proper subpoena to enforce his presence in court on August 27, 1968 and accordingly no offence had been committed under section 174 of the Penal Code.

Case referred to:—

(1) *Teh Lee Tong* v. *R.* [1956] M.L.J. 194.

CRIMINAL REVISION.

Applicant in person.

M. Mahalingam (Deputy Public Prosecutor) for the respondent.

Chang Min Tat J.: My attention having been drawn by a letter from the accused, I called for the record and found a comedy of errors in five acts that would have been farcical if it had not been so fraught with dire consequences.

Act I commenced with the arrest and trial of some six persons from a crowd of rioters. The offence was committed on the night of 17th March 1967, and the trial was, in what I now believe to be the usual practice in the courts here, adjourned from time to time until its final conclusion on 23rd February, 1968. There were in all seven appearances in court, in 1967 on 18th May, 25th May, 19th July, 19th September, 30th November and in 1968 on 22nd and 23rd February. Only on the last two days was evidence recorded, though on the other five days, the case was set down for hearing. Subpoenas were applied for on 6th April, 1967 to compel the attendance of witnesses, of whom the accused was one, on 18th May, 1967. From the absence of any proceedings taken either in accordance with the Criminal Procedure Code (Cap. 6) or otherwise against the accused, it must be assumed that the accused dutifully turned up in court on each of the said seven days.

Act II saw the arrest of the 7th rioter on 15th March, 1968. The case against this 7th rioter was fixed for hearing on 7th June, 1968. Subpoenas were applied for on 14th May, 1968 and one was served on the accused on 3rd June, 1968. On the day fixed for the hearing, the prosecution applied for an adjournment upon the ground that the complainant was not in court, he not having been served. A fresh date for the hearing was fixed on 27th August, 1968.